

REMARKS

Claims 1-13 are pending in the application. The Office Action of July 12, 2004 rejected claims 1-6 and 9 under the judicially created doctrine of obviousness-type double patenting. Claims 1-13 were rejected under 35 U.S.C. §103 as being unpatentable for obviousness over various references. Applicant requests reconsideration and withdrawal of the rejections.

Objection To The Specification

The Office Action objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. The Office Action stated that the term "tract" in claims 11 to 13 was not recited in the specification. Applicant respectfully submits that the Office Action is in error, since paragraph 0016 of the specification recites the term "tract".

Rejection of Claims 1-6 and 9 Based On Obviousness-Type Double Patenting

The Office Action of July 12, 2004, rejected claims 1-6 and 9 based on obviousness-type double patenting over claims 1-3 and 9 of U.S. Patent No. 5,651,213 in view of Buller GB 2200828 A1. Applicant submits that the rejection should be withdrawn because claims 1-6 and 9 of the present application would not have been obvious over claims 1-3 and 9 of the '213 patent and Buller, since there is no motivation or suggestion to modify the subject matter of those claims or to combine with the teachings of Buller.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art to modify the transportable turf of claims 1-3 and 9 of U.S. Patent 5,651,213 by adding a porous foundation with grass root intertwined as disclosed by Buller so as to have a turf that can be "rolled up and transplanted without the use of harvesters or the loss of top soil." (Office Action, page 3, quoting Buller, at page 1, 3rd paragraph). Applicant submits that this does not provide a motivation to modify the specific subject matter of claims 1-3 and 9 of the '213 patent to include a porous foundation. Buller does not provide a motivation to modify any and every transportable turf to include a porous foundation. The Office Action makes no showing that Buller's teachings regarding its turf prepared from a 4:1 peat/perlite mixture are applicable to turfs of other root zone mediums. Accordingly, Applicant submits that claims 1-6 and 9 of the present application would not have been obvious over claims 1-3 and 9 of the '213 patent in view of Buller.

**Rejection of Claims 1-13 as Obvious Over Kuestner
U.S. Patent No. 5,605,589 in View of Other References**

Claims 1-6 and 10 were rejected under 35 U.S.C. §103(a) as obvious over Kuestner U.S. Patent No. 5,605,589 in view of Beard (Turfgrass: Science and Culture). Claims 7, 8 and 11-13 were rejected under 35 U.S.C. §103(a) as unpatentable over Kuestner in view of Beard and further in view of Zamboni U.S. Patent No. 4,084,763. Claim 9 was rejected based on Kuestner in view of Beard and further in view of Miyachi U.S. Patent No. 4,982,526.

Applicant has amended claim 1 so that it recites a root zone medium that is a mixture of organic amendment and sand. The amendment is supported throughout the specification including, for example, at page 8, paragraphs 0021, 0022 and 0028. Applicant has also amended claim 1 so that it recites that the root zone medium is spread over the porous foundation. The amendment is supported throughout the specification including, for example, at page 16, paragraph 0032, and at Figure 2.

Kuestner does not disclose or suggest a root zone medium comprising a mixture of sand and organic amendment. In Kuestner, the sod is shown as including layers 10 and 14 of peat moss, humus or the like, and a layer 15 of sand. (See Fig. 1, col. 2, lines 20-27). The sand layer 15 is separate from layers 10 and 14. Also, the sand layer 15 is not spread over the porous foundation. Layer 14 is disposed between the sand layer 15 and the mesh 12.

Accordingly, claims 1-13 of the present application would not have been obvious to one of ordinary skill in the art based on Kuestner and any combination of Beard, Zamboni and/or Miyachi. Applicant requests that the rejection of claims 1-13 be withdrawn.

Conclusion

The Commissioner is hereby authorized to charge any deficiency or credit any excess portion of this fee to Deposit Account No. 13-0017.

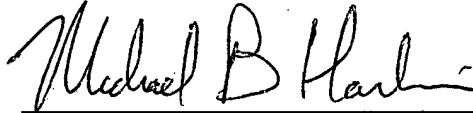
In view of the foregoing remarks, Applicant respectfully requests allowance of claims 1-13. The Examiner is invited to telephone Applicant's undersigned

representative at 312-775-8202 if the Examiner believes, for any reason, that personal communication would expedite prosecution of this application.

Respectfully submitted,
McANDREWS, HELD & MALLOY, LTD.

Date: January 12, 2005

By:

A handwritten signature in cursive script, appearing to read "Michael B. Harlin", written over a horizontal line.

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